



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	<b>06/26/00</b>	Bill No:	<b>AB 1965</b>
Tax:	<b>Sales and Use</b>	Author:	<b>Leach, et al.</b>
Board Position:	<b>Support-Board Sponsored</b>	Related Bills:	<b>SB 129 (Peace)</b>

### **BILL SUMMARY:**

This bill would prohibit the release of the names and addresses of individuals who are registered with, or are holding licenses or permits issued by, the State Board of Equalization, except as necessary to verify resale certificates or administer the tax and fee provisions of the Revenue and Taxation Code, as specified. In addition, this bill would not prohibit the release to, or limit the use by, any federal or state agency, or local government, of any data collected by the Board that is otherwise authorized by law.

### **ANALYSIS:**

#### Current Law:

Section 1 of Article I of the California Constitution states:

All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

The Information Practices Act, or IPA (commencing with Section 1798 of the Civil Code), provides that state agencies shall only maintain necessary personal information in their records, as specified, and shall not disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains, with certain exceptions. For example, the IPA specifically permits the Board to sell names and addresses of permit holders to commercial users of the information, provided that any related state costs be paid from fees received by the Board for the sale. The Board also provides information to confirm the existence of seller's permits, or resale certificates, to individuals requesting it. The IPA is modeled after the Federal Privacy Act of 1974, and became effective in 1978.

Personal information may be disclosed pursuant to the Public Records Act, or PRA (commencing with Section 6250 of the Government Code), which provides for public access to any record maintained by a state and local agency, unless there is a statutory exemption that allows or requires the agency to withhold the record. Confidential information, as specified within each tax or fee program, is exempt from disclosure under the PRA and may not be released unless specifically authorized by the Governor or with the taxpayer's consent. The PRA is modeled after the Federal Freedom of Information Act, and became effective in 1968.

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.*

Proposed Law:

This bill would amend Sections 1798.61 and 1798.75 of, and add Section 1798.69 to the Civil Code to prohibit the release of names and addresses of individuals who are registered with or are holding licenses or permits issued by the Board. This proposed restriction would only apply to information about individuals (sole proprietors). The names and addresses of entities such as partnerships, corporations, or other business organizations would remain accessible for commercial purposes pursuant to the PRA. This bill would also clarify that disclosure of information as necessary to verify resale certificates or to administer the tax and fee provisions of the Revenue and Taxation Code would continue to be permitted. This bill would specifically not prohibit the release by the Board to, or limit the use by, any federal or state agency, or local government, of any data collected by the Board.

In General:

Currently, in accordance with the IPA, the Board provides customized “mailing” lists of the names and addresses of persons who are registered with the Board under the Sales and Use Tax Law, and also has a “searching service” that provides nonconfidential taxpayer information. Both services are provided to private sector requestors for a fee that allows the Board to recoup the costs associated with providing these services.

Requestors of mailing lists, who largely consist of direct-mail marketers, must specify the media option (computer printout, labels, magnetic tape, etc.) and the selection option (by geographic area, business code, or tax program). The information provided by the Board includes the business name, owner’s name (or corporation name), and mailing address. Additional information such as the account number, business address (if different than the mailing address), business code, ownership designation (sole proprietor, partnership, corporation), start date, and tax area may be provided depending on the media option selected. This information is also available on a weekly basis, printed on 3 x 5 cards, and may specify new accounts, changes, close-outs, reinstatements, or any combination.

The BOE searching service is a fee-based method by which taxpayers, organizations, and individuals may obtain a business owner’s name, business address, and account status (open or closed). The overlying authority that allows this service to be provided is the PRA. Personal or confidential data and copies of file materials are not available through the searching service. Requests for the searching service may come from collection agencies, attorneys, banks and mortgage companies, and wholesalers (attempting to verify resale certificates). Resale certificate validation is also available free of charge on the BOE website.

The BOE also enters into agreements with other state, local, and federal agencies and private organizations (such as the Federation of Tax Administrators and the Multistate Tax Compact) to furnish or exchange data. These agreements allow agencies to assist one another with tax enforcement and administration.

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board’s formal position.*

The Board currently provides cities, counties, and special taxing jurisdictions on a monthly basis with records of the businesses in their jurisdictions that have been issued seller's permits. The Board encourages these entities, through both written and oral communications, to compare their lists of entities having business licenses with the Board's list of seller's permits issued, and to notify the Board of any businesses that have been issued a business license for sales of goods that are not on the seller's permit list. In addition, the Board's publication - Pamphlet 28 - "Tax Information for City and County Officials," instructs cities and counties on how to compare the Board's seller's permit registration data with their data in order to both insure correct local tax allocation, and to identify persons who should have a seller's permit.

#### Background:

The IPA was added by SB 170, Chapter 709 of 1977, effective July 1, 1978. As originally enacted, the IPA prohibited the commercial sale or distribution of names and addresses of individuals, defined as natural persons (sole proprietors were considered natural persons for purposes of the IPA).

Effective September 19, 1978, an urgency statute (SB 1429, Chapter 874 of 1978) was enacted that changed the definition of "individual" to mean "a natural person acting in his or her individual and private capacity." By changing the definition of individual, the sale of all permittee names and addresses was again allowed as it had been prior to the enactment of SB 170.

Effective January 1, 1981, the IPA was amended (AB 502, Chapter 174 of 1980) to again define the term "individual" to mean "a natural person," so that the name and address of any person registered with the Board as an individual owner (sole proprietor) would be subject to the restrictions of the IPA. This change once again prohibited the Board from selling names and addresses of individual permit holders, until the enactment of AB 1355 (Chapter 1001 of 1982) effective January 1, 1983, which remains in effect today.

#### **COMMENTS:**

- 1. Sponsor and purpose of the bill.** This bill is sponsored by the Board of Equalization. The Board has received complaints from permit holders who do not want their names and addresses made available to direct mail marketers. In particular, individuals who work from their homes have complained to both the Board and the Legislature about the public release of their home addresses. The Board collects information from permit holders for use in the tax collection system and, in order to protect the privacy of taxpayer information, the Board Members believe that this information should not be released, except to verify the existence of a resale certificate and to administer the tax and fee provisions of the Revenue and Taxation Code.

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.*

2. **Amendments to this bill since our last analysis of the June 7, 2000 version are primarily technical.** The amendments clarify that the bill shall not prohibit the release by the Board to, or limit the use by, any federal or state agency, or local government, of any data collected by the Board *that is otherwise authorized by law*.
3. **This bill would again prohibit the Board from selling names and addresses of individual permit holders.** The prohibition would protect the privacy of these businesses and may eliminate or reduce the unsolicited mailings sent to permit holders. Data collected by the Board would still be available to federal, state, and local government agencies.
4. **Related Legislation.** Other bills that address individual privacy were introduced this session. Among those bills, SB 129 (Peace) would create the office of Privacy Ombudsman to issue administrative decisions related to personal information collection and disclosure.

**COST ESTIMATE:**

One time costs that may be incurred as a result of this bill would be in the range of \$10,000 to \$50,000 for reprogramming needs (to distinguish individual accounts that would no longer be available for release from partnerships and corporations that would remain accessible), and to accommodate workload associated with informing staff and the public of the law change. It is not anticipated that a change would occur in the number of requests for mailing lists.

**REVENUE ESTIMATE:**

This bill would not impact the state's revenues.

---

Analysis prepared by:	Laurie D. Watson	324-1890	06/28/00
Contact:	Margaret S. Shedd	322-2376	

g:\legislat\assm\1965-4lw.doc

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.*